IN THE HIGH COURT OF BOMBAY AT GOA

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WRIT PETITION NO. 176 OF 2001

1. Smt. Shashikala Kakodkar,
   r/o 19D, La Campala
   Colony, Miramar, Goa,

2. Smt. Usha S. Vengurlekar,
   r/o 133-A, Sion (West),
   Mumbai, and

3. Smt. Kranti V. Rao,
   r/o Bandodkar House,
   Altinho, Panaji, Goa,
   presently r/o 2485,
   Via Castillo, Tustin,
   California, U.S.A. ... Petitioners.

Versus

1. Reserve Bank of India,
   through its Manager,
   Public Debt Office,
   Post Box No.4528,
   Central Post Office,
   Opp. Mumbai Central
   Railway Station,
   Byculla, Mumbai, 400 008,

2. Union of India, through
   its Secretary to Finance
   Minister, 134, North Block,
   New Delhi. 30, Aurangzeb
   Road, New Delhi. ... Respondents.

Shri M. S. Usgaokar, Senior Adovcate with Ms. Swati S. Kamat, advocate for the petitioners.

Shri V. P.Thali, Senior Central Goverment Standing Counsel with Ms. G. Pednekar, advocate for the respondents.

CORAM : P. V. HARDAS &
D. G. KARNIK, JJ.

DATE : 15th April, 2004

ORAL JUDGMENT (Per D. G. Karnik, J.)

Heard learned counsel for the parties. By this petition the petitioners seek a writ of mandamus directing

the respondent no.1, the Reserve Bank of India, to transfer 9% Government of India Relief Bonds, 1987, standing in the name of the late Sunandabai Dayanand Bandodkar, in the name of the petitioners, without insisting upon the probate or letters of administration to her last will and testament dated 1st April, 1985, or without insisting on a succession certificate.

2. The 9% Government of India Relief Bonds in question (hereinafter referred to as "the said bonds"), are issued as Government security under Section 1-A of the Public Debt Act, 1944. By virtue of the Goa, Daman and Diu (Laws) Regulation, 1962, the provisions of the Public Debt Act, 1944 apply to the State of Goa. Section 7 of the Public Debt Act, 1944, reads as under:-

> **"7. Persons whose title to a Government security of a deceased sole holder may be recognised by the Bank. -**
>
> Subject to the provisions of Section 9 the executors or administrators of a deceased sole holder of a Government security and the holder of a succession certificate issued under Part X of the Indian Succession Act, 1925, shall be the only person who may be recognised by the Bank as having any title to the Government security:"
> (Proviso being not relevant is not quoted).

Section 9 of the Public Debt Act enables the Government to dispense with production of the probate or letters of administration or a succession certificate, in respect of small holders holding a public security of the face value of

not more than Rs.5,000/-. The bonds in question, have the face value of Rs.30,00,000/- and, therefore, Section 9 is not applicable. Under Section 7 of the Public Debt Act, the Government can recognize only the person holding probate or letters of administration or a succession certificate as the person entitled to the estate of the deceased. In view of this, the respondents were right in insisting upon production of the probate or letters of administration or a succession certificate, for making payment in respect of the said bonds.

3. Learned counsel for the petitioners invited our attention to Section 12 of the Public Debt Act, 1944, which provides that where a doubt exists as to the title to the Government security, the Government may proceed to determine the person who would be entitled thereto. In our opinion, Section 12 of the Public Debt Act applies where a doubt exists as to the original title of Government security, or where two or more persons make a sole claim thereto on the basis of transfer inter vivos, where such transfer is permissible. It does not cover a case of inheritance or succession to a Government security which is governed by Section 7 of the Public Debt Act. Furthermore, Section 12 is an empowering Section which enables the respondents to determine the claim as to title. It does not compel the respondents to determine the claim in every case. It is open to the Government either to determine the claim by itself by virtue of Section 12, or to require the adjudication at the

hands of a competent Court. Therefore, assuming that Section 12 applies even in respect of claim of succession, in our opinion, it is not obligatory for the respondents to determine the claim under Section 12.

4. A perusal of paragraph 26 of the will discloses that even in the lifetime of the deceased, there were certain disputes between her daughters. The testator herself contemplated that one of her daughters or daughter's husband may challenge the will and, therefore, made a provision as to the inheritance in the event of the will being challenged. The deceased has left behind her widow of a predeceased son. It is urged at the Bar that under the common Civil Code which is applicable in Goa, a will can be made in respect of only 50% of the property and balance 50% goes by succession, as per the common Civil Code. Whether widow of the predeceased son would inherit any share in the bonds is also an issue of some legal intricacy. In view of this, the respondents were justified in not exercising discretion, assuming that they had any, to determine the issue as to succession under Section 12 and insisting upon the production of the probate or letters of administration or succession certificate under Section 7 of the Public Debt Act. In any event, in writ jurisdiction, we cannot interfere in the exercise of that discretion by the respondents.

5. Shri Usgaokar, learned Senior Counsel for the

petitioners, further contended that a deed of partition has been executed between the four daughters of the deceased on 10th January, 1997, under which the property in the bond has been partitioned and distributed amongst the heirs and legatees under the will. He therefore contended that Section 7 has no application as the property has already been partitioned and distributed amongst the heirs. In our opinion the respondents are not concerned with the subsequent dispossession of the property by the heirs and legatees whether by partition or otherwise, between the heirs. Their right to partition or further disposition of the said bonds arose only under a will or on account of succession. Unless their ownership by way of inheritance or succession was recognised under Section 7 of the Public Debt Act, there was no question of the respondents recognizing their further claim of partition. In our opinion, it cannot be contended that by reason of a subsequent partition the requirement of Section 7 of the Public Debt Act has been dispensed with.

6. We find no merit in this petition which is hereby dismissed. Rule discharged.

P. V.HARDAS, J.

D. G. KARNIK, J.